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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,047	03/26/2001	Ebrahim Rezai	AA348X	4885

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EXAMINER

WACHTEL, ALEXIS A

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 03/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/806,047

Applicant(s)

REZAI ET AL.

Examiner

Alexis Wachtel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 25 November 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11-25-2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Detailed Action***

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-8 and 10-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,940,464 to Van Gompel et al in view of US 5,789,065 to Haffner et al.

Van Gompel discloses a disposable pant-like garment for absorbing human discharge and comprises an absorbent assembly comprising a liquid-impervious outer cover (backsheet), liquid pervious liner (topsheet) and an absorbent core contained there between. The garment has a pair of stretchable side panels and generally opposite end edges (Abstract). Examiner notes that said garment inherently has a longitudinal center line, longitudinal edges, a front, back and crotch region. Said garment has seams joining the chassis to the side panels (Col 3, lines 25-33). Said garment's side panels are stretchable and have front and rear portions that are connected by side seams (Col 3, lines 20-25, Fig.1). The stretchable side panels be provided in the form of stretchbonded laminate comprising an outer layer, an inner body side layer and a central elastic layer disposed between the outer and inner layers. The outer and inner layers can be made of continuous spunbonded polyester fibers (Col 5, lines 1-8). The central elastic layer can be a meltblown nonwoven (Col 5, lines 9-13).

Van Gompel et al as set forth above fails to teach that the outer and inner nonwoven layers have a preferred fiber orientation and wherein the central elastic meltblown nonwoven is made of the claimed elastomer as claimed in claim 1,10 and 11.

Haffner et al teaches a sandwiched fabric composite made of nonwoven (12), elastic material (50), and nonwoven (14). Nonwovens (12 and 14) have fibers oriented in a general direction for the purpose of providing strength to the end laminate (Col 9, lines 20-25). Said nonwovens can be made of spunbonded polyester or nylon polymers (Col 8, lines 61-65). Elastic material (50) can be a nonwoven made of styrene/ethylene-butylene (Col 6, line 55). The sandwiched fabric composite can be used in personal care products as side tabs or ears on diapers or childcare training pants, and the like which need to be strong and elastic yet resistant to peeling (Col 13, lines 29-37). Since the sandwiched fabric composite disclosed by Haffner et al is functionally equivalent to the stretchbonded laminate disclosed by Van Gompel, it would have been obvious to one of ordinary skill at the time the invention was made to have replaced the stretchbonded laminate employed by Van Gompel with the sandwiched fabric composite of Haffner et al. One of ordinary skill would have been motivated by the desire the strength and resistance to peeling of the stretchable side panels disclosed by Van Gompel.

Regarding claims 1,4,10,11 and 16, the claimed fiber orientation ratios are all inherent given that Van Gompel et al and Haffner et al teach a garment using a nonwoven having fibers arranged in a preferred direction.

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Regarding claims 2,3,14 and 15, although the claimed Tensile Strength Ratio and stress at 30% elongation are not explicitly taught by Van Gompel et al and Haffner et al, it is reasonable to presume that said limitations would be met by the combination of the two references. Support for said presumption is found in the use of similar materials (i.e. elastic nonwoven sandwiched in between two non-elastic nonwovens made having a preferred fiber direction) and in the similar production steps (i.e. lamination of said elastic nonwoven in between two non-elastic nonwoven layers) used to produce the double faced velour fabric. The burden is upon the Applicant to prove otherwise.

The references as set forth above fail to teach the claimed basis weight of the non-elastic nonwoven. However, the basis weight is a variable dependent on practical applications. Too heavy of a basis weight results with a product that is too heavy, bulky and uncomfortable. Too light of a basis weight results with a product that is too weak to perform adequately. Based on this, it would have been obvious for one of ordinary skill to optimize this result effective variable which would naturally lead one to the claimed values, especially since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art, *In Re Aller*, 105 USPQ 233.

3. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,940,464 to Van Gompel et al in view of US 5,789,065 to Haffner et al further in view of US 5,114,781 to Mormon.

In the alternative, Van Gompel and Haffner et al as set forth above fail to teach the claimed basis weight of the non-elastic nonwoven. Mormon teaches a composite elastic material having at least one elastic sheet and at least one reversibly necked material joined to the elastic sheet (Abstract). The reversibly necked material can be a spunbonded or meltblown nonwoven (Col 6, lines 11-15) and have a basis weight of 0.2-8.0 OSY corresponding to 6.8-339.0 g/m<sup>2</sup> (Col 8, lines 45-61). Such composite materials can be used in diaper applications (Col 1, lines 18-20). Since both Mormon and the references as set forth above disclose using composites comprising an elastic layer and non-elastic nonwoven, it would have been obvious to one of ordinary skill to have used the nonwoven basis weight as disclosed by Mormon for the nonwoven disclosed by Van Gompel et al and Haffner et al. One of ordinary skill would have been motivated by the desire to use a nonwoven basis weight that is known to function satisfactorily in a diaper application.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,940,464 to Van Gompel et al in view of US 5,789,065 to Haffner et al in view of US 6,231,976 B1 to Dean et al.

Regarding claim 9, Van Gompel et al and Haffner et al fail to teach that the fibers in the non-elastic nonwoven are bicomponent fibers. Dean et al teaches that bicomponent binder fibers can be used to make nonwovens to eliminated the need for a separate adhesive (Col 3, lines 25-40). In view of this teaching, it would have been obvious for one of ordinary skill to have used bicomponent binder fibers to make the

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non-elastic nonwoven. One of ordinary skill would have been motivated by the desire to reduce the amount of time used to make the non-elastic nonwoven.

**Conclusion**

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alex Wachtel whose telephone number is 571-272-1455. The examiner can normally be reached on 10:30am to 6:30pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Glenn Caldarola, can be reached at (571)-272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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